

December 23, 2005

Visiting Nurse Association of Cleveland
2500 East 22nd Street
Cleveland, OH 44115

RE: Ohio Nurses Association
(Visiting Nurse Association of Cleveland)
Case No. 8-CB-10458

Dear Sir or Madam:

The Region has carefully investigated and considered your charge against Ohio Nurses Association alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

The charge alleges that the Union acted in violation of Section 8(b)(3) of the Act by engaging in bad faith bargaining in the negotiations that led to the most recent collective bargaining agreement. More specifically, the charge alleges that the Union engaged in certain tactics that were violative of the Act including: 1) taking a “no changes” position in its bargaining position; 2) submitting proposals that were predictably unacceptable to the Employer and then withdrawing them at the last minute; 3) taking prolonged caucuses during bargaining sessions and engaging in other delay tactics such as coming to the bargaining table unprepared; and, 4) making disparaging remarks about the Employer’s attorney. It is alleged that these individual acts and/or the totality of the Union’s conduct was unlawful. In addition, the Employer contended during the investigation that the Union reached an agreement with it concerning the drug policy but then unlawfully failed to execute that agreement. The investigation showed that none of the alleged unlawful acts of the Union taken alone or considered under the totality of the circumstances constituted a violation of the Act.

The Employer provided evidence to show that the Union took lengthy caucuses during negotiating meetings but the investigation failed to demonstrate that the Union’s conduct was unwarranted or designed to delay or subvert the negotiating process. **Southside Electric Cooperative, Inc., 243 NLRB 390, 396 (1979)**, cited by the Employer in support of its argument is distinguishable on its facts. In that case, the respondent employer was determined to have bargained in bad faith by delaying holding meetings with the union, arriving late to bargaining meetings and disrupting them, holding overly long caucuses, refusing to submit an economic proposal, unlawfully withdrawing recognition from the union during the certification year and engaging in unilateral changes.

Likewise the case cited by the Employer in support of its claim that the Union unlawfully withdrew certain proposals at the last minute is also inapposite on the facts. In **Harry R. Pickett d/b/a F&J Wire Products Co., 174 NLRB 340 (1969)**, the employer was found to have violated Section 8(a)(5) of the Act when it took a significantly harsher position at the bargaining table by withdrawing earlier proposals it had made. In the instant case, the Union’s withdrawal

of proposals that were previously rejected by the Employer could have led to a more conciliatory bargaining position.

With respect to the alleged disparaging remark made to the Employer's attorney, there was no evidence that the alleged comment was coupled with a threat or a demand. The investigation also failed to establish that the alleged remark undermined the negotiations. The case law cited by the Employer in support of its contention that the Union's remark evinced a determination to reject any changes to the contract is distinguishable on the facts. In **Teamsters Local 122, 334 NLRB 1190, 1251 (2001)**, the Board concluded that the charged union violated the act by engaging in a consumer boycott while also delaying bargaining so as to coerce the employer to sell its business to a company that was friendlier to the union. The respondent union's conduct was so egregious that the Board awarded litigation costs to the employer and the General Counsel.

Therefore, it was concluded that none of these alleged unlawful acts constituted an unfair labor practice in and of themselves or when viewed in their totality.

Finally, the investigation failed to establish that the Union refused to execute an agreement on drug policy. Evidence did not establish that any such agreement was reached even though members of the Employer's negotiating team assumed that had occurred. There was no evidence of an agreement on drug policy being reduced to writing, initialed or submitted to the Union for signature.

In conclusion, the alleged violations of Section 8(b)(3) of the Act are not supported by the evidence. Accordingly, I am refusing to issue complaint in this matter.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. If you wish to file an appeal, your attention is directed to the following:

Appeal Due Date: The appeal **must be received by the General Counsel in Washington, D.C.** by the close of business at **5:00 p.m. on January 6, 2006**. However, if you mail the appeal, it will be considered timely if it is postmarked no later than one day before the due date. The appeal **MAY NOT** be filed by facsimile transmission.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. You may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extensions of time. A request for an extension of time to file an appeal **must be received** on or before the original appeal due date. A request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Appeal Contents: You are encouraged to submit a complete statement setting forth the facts and the reasons why you believe the decision to dismiss the charge was incorrect. However, the enclosed Appeal Form (NLRB-4767) by itself will be treated as an appeal if timely filed upon the General Counsel and me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Address for Appeal: The appeal should be sent to the General Counsel of the National Labor Relations Board, Office of Appeals, 1099 14th Street, N.W., Washington, D.C. 20570. You should send a copy of the appeal to me.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Frederick J. Calatrello
Regional Director

FJC/sz

cc: Office of Appeals
N.L.R.B.
Washington, D.C. 20570

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 14th Street, N.W.
Washington, D.C. 20570

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Ohio Nurses Association (Visiting Nurse Association of Cleveland)

Case Name(s).

8-CB-10458

Case No(s). (If more than one case number, include all case numbers in which appeal is taken.)

(Signature)

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